

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Applications of

MM DOCKET NO. 93-42

MOONBEAM, INC.

File No. BPH-911115MG

GARY E. WILLSON

File No. BPH-911115MO

**For a Construction Permit
New FM Station on Channel 265A
in Calistoga, California**

**To: The Honorable Edward Luton
Administrative Law Judge**

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Statement, Moonbeam again claimed, "Since February 25, 1992, Ms. Constant has been an associate real estate agent for James Warren & Sons (Realtors), 1414 Main Street, St. Helena, California. St. Helena is located within 1.0 MV contour of Moonbeam's proposed radio station." See Exhibit 2. It appears, as more fully discovered below, that Ms. Constant has not been employed in the service area as she claims.

Moonbeam in its amended application also reported that Ms. Constant, "lived in Santa Rosa, Sonoma County, California while attending college at Sonoma State University, Santa Rosa, California. Calistoga, California is located in Napa County, which is contiguous to Sonoma County. Santa Rosa and substantial portions of Sonoma County are within the 1.0 mV contour of Moonbeam's proposed station" (emphasis added). See Ex. 1. In Moonbeam's Integration and Diversification Statement, Moonbeam again reported "Ms. Constant also attended college at Sonoma State University, Santa Rosa, Sonoma County, California from 1964 through 1966. Santa Rosa and substantial portions of Sonoma County are within the 1.0 mV contour of Moonbeam's proposed station." See Ex. 2. Ms. Constant did not claim, as she did in her amended application, that she lived in Santa Rosa while attending college at Sonoma State University. As it turns out, Sonoma State University is not located in Santa Rosa, but in Rohnert Park, 6-7 kilometers outside the 1 mV contour.¹ See Ex. 3. There also appears to be a question of whether Ms. Constant

¹ Sonoma State University is now called California State University Sonoma and has been for a number of years.

ever resided in Santa Rosa while attending Sonoma State University as claimed in Moonbeam's amended application.

The Issue.

Attached are the declarations of three individuals supporting Willson's contention that Ms. Constant was never employed as an associate real estate agent for James Warren & Sons (Realtors), 1414 Main Street, St. Helena, California. Mr. Matthew Horner, a real estate sales person with Real Estate Investment Planners, called James Warren & Sons on April 5, 1993. He was advised that Mary Constant was not working for James Warren & Sons and that she never had. He also confirmed with the California Department of Real Estate in Sacramento, California that, although Mary Constant was in fact a licensed real estate salesperson, her license was not currently held in any office in the state. California law requires a real estate salesperson actively selling real estate to have her license held by a broker. See Ex. 4.

Carol Bedi called James Warren & Sons Realtors on March 12, 1993, at 9:30 a.m. She was advised by James Warren & Sons Realtors that Mary Constant was not a realtor employed by the company, but that Ms. Constant was looking for property. See Ex. 5. Finally, Gary Willson called James Warren & Sons Realtors on September 16, 1992. He too was advised that Mary Constant was not on the list of realtors employed by James Warren & Sons Realtors. See Ex. 6.

A misrepresentation issue is warranted. The Commission is always concerned "with the broadcast applicant's propensity to be

truthful in dealing with the Commission." San Joaquin Television Improvement Corp., 2 FCC Rcd. 7004, 7005, ¶8 (1987). In San Joaquin, the Commission remanded on a misrepresentation issue involving employment to explore a 3-year discrepancy in the prior employment of one principal with Unimarc. The Commission, in Richardson Broadcast Group, 7 FCC Rcd. 1583 (1992) disqualified an applicant for falsely testifying about the extent of her local residence. The Commission noted, "While many of the matters about which Younts either was evasive or deceptive individually may be of little moment, collectively they demonstrate a pattern of evasiveness and false testimony clearly indicating a willingness to deceive the Commission to gain a perceived advantage." Id. at ¶3.

By falsely claiming she is employed by a real estate company in St. Helena, California, Ms. Constant has created the false impression she has more familiarity and contact with the proposed service area than she does. The same can be said for her misstatements concerning Sonoma State University, which is not located within Santa Rosa or the 1 mV contour, but in Rohnert Park, outside the 1 mV contour. It also appears Ms. Constant never lived within the service area as reported in her amendment filed on March 2, 1992. Ms. Constant has misled the Commission concerning her local residency and involvement within the service area.

This Petition to Enlarge is timely filed pursuant to Rule 1.229. It has been filed within 15 days of newly discovered evidence. The Petition is based on information contained in

Moonbeam's Integration and Diversification Statement, received by counsel on April 6, 1993, and on recent information provided by declarants. The Integration and Diversification Statement raised questions about the accuracy of Moonbeam's application as amended and restates misrepresentations made earlier in its application, thus confirming that the false information in the amended application was not accidental.

WHEREFORE, Gary Willson respectfully requests that the following or a similar issue be added in this proceeding:

To determine whether Moonbeam, Inc. has made misrepresentations or lacked candor in representations made to the Commission concerning Mary Constant's employment and past local residence; and, if so, the effect thereof upon Moonbeam's basic qualifications to be a Commission permittee/licensee.

Willson further requests that, if the requested issue is added, Moonbeam be ordered to provide the supplemental discovery requested in Ex. 7.

Respectfully submitted,

GARY E. WILLSON

GAMMON & GRANGE
8280 Greensboro Drive
Seventh Floor
McLean, VA 22102-3807
(703) 761-5000

April 21, 1993

By 
A. Wray Fitch III
His Attorney

EXHIBIT 1

0992-102-65

STAMP & RETURN
COPY

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HALEY, BADER & POTTS

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KATELEEN VICTORY
MELODIE A. VIRTUE

LARRY D. SUMNERVILLE
BROADCAST ANALYST

ANDREW G. HALEY
(1904-1966)

March 2, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.

AMENDMENT

Please amend the pending application (FCC Form 301) of Moonbeam, Inc. (File No. BPH-911115MG), for a construction permit for a new commercial FM broadcast station on FM Channel 265 (100.9 MHz) at Calistoga, California, in the following respects:

Section II, Page 2 (FCC 301, Page 3): Delete the Section II, Page 2 (FCC 301, Page 3), previously submitted and substitute in lieu thereof the amended Section II, Page 2 (FCC 301, Page 3), that is submitted herewith.

Section II, Page 3 (FCC 301, Page 4): Delete the Section II, Page 3 (FCC 301, Page 4), previously submitted and substitute in lieu thereof the amended Section II, Page

MOONBEAM, INC.
INTEGRATION STATEMENT

Mary F. Constant will participate in the management of the proposed station and will work full-time (a minimum of 40 hours per week) as General Manager of the station, and will supervise the overall operations of the station and the employees. Mary F. Constant is a female and Moonbeam, Inc. ("Moonbeam"), claims whatever comparative enhancement may now exist for her gender.

Mary F. Constant is a former resident of Sonoma County, having resided there from 1946 until 1969. During that time Ms. Constant served as a Junior Grey Lady at the Petaluma Hospital, Petaluma, Sonoma County, California. She lived in Santa Rosa, Sonoma County, California while attending college at Sonoma State University, Santa Rosa, California. Calistoga, California, is located in Napa County, which is contiguous to Sonoma County. Santa Rosa and substantial portions of Sonoma County are within the 1.0 mV/m contour of Moonbeam's proposed station.

Mary F. Constant intends to relocate her residence within the 1.0 mV/m contour of the station proposed by Moonbeam, and is presently actively pursuing permanent residence within that area. As of February 25, 1992, Ms. Constant has become employed as an associate real estate agent for James Warren & Son (Realtors), 1414 Main Street, St. Helena, California. St. Helena is located within the 1.0 mV/m contour of Moonbeam's proposed radio station. In the event that Moonbeam's application is granted, Ms. Constant will terminate her current employment in order to fulfill her integration commitment to work full-time as General Manager of Moonbeam's radio station.

Mary F. Constant is presently a member of the Calistoga Chamber of Commerce, the Sharpsteen Museum, the Calistoga Performing Arts Association, and the Native Daughters of the Golden West, all civic organizations located in Calistoga, California. In addition, she is a docent at the Terwillager Nature Education Center, Corte Madera, California (which provides services to elementary schools from Napa and Sonoma Counties); and a volunteer for the Napa Valley Wine Auction, St. Helena, California, a benefit for Napa Valley hospitals. Since 1988 Ms. Constant has been a member of the Napa-Sonoma Tennis Association, Napa, California. These activities and organizations are located or serve organizations within the 1.0 mV/m contour of Moonbeam's proposed radio station. Moonbeam will claim comparative enhancements for (i) past local residence within the service area; (ii) civic involvement in the community of license and within the coverage area, and (iii) proposed residency within the coverage area of the radio station.

EXHIBIT 2

LAW OFFICES
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SUSAN H. ROSENAU
ADMITTED IN D.C. ONLY

April 5, 1993

By Hand

Donna R. Searcy

Secretary

Federal Communications Commission

Washington, D.C. 20554

Before The
Federal Communications Commission
Washington, D.C. 20554

In re Applications Of)	Docket No. MM 93-42
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MOONBEAM, INC.)	File No. BPH-911115MG
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GARY E. WILLSON)	File No. BPH-911115MO
)	
For a Construction Permit for a)	
New FM Station on Channel)	
265A in Calistoga, California)	

To: The Honorable Edward Luton
Administrative Law Judge

Integration and Diversification Statement

Moonbeam, Inc. ("Moonbeam"), an applicant in the above-referenced proceeding, pursuant to the Hearing Designation Order released on March 8, 1993, and Section 1.325(c)(2) of the Commission's Rules, hereby submits its Integration and Diversification Statement.

Ownership Structure

Moonbeam is a corporation organized under the laws of the State of Idaho. The officers, directors and shareholders of Moonbeam are as follows:

Principal	Citizenship	Office	Director	Ownership
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Integration

Mary F. Constant will participate in the management of the proposed station and will work full-time (a minimum of forty (40) hours per week) as General Manager of the station. As General Manager, her duties and responsibilities will include, but will not be limited to:

- supervision and oversight of all departments of the station, including business, sales, traffic, programming engineering and administration;
- determination on a day-to-day basis all station policies;
- recruitment, hiring, evaluation, promotion and dismissal of station personnel;
- selection, purchase and acquisition of all equipment (hardware and software) used at the station;
- supervision of the station's construction; and
- overall supervision of all station operations.

Gender

Ms. Constant, who is female, claims whatever comparative enhancement may now exist for her gender.

Residence and Employment

Ms. Constant also intends to relocate her residence to and move within the 1.0 mV/m contour of the station proposed by Moonbeam. Ms. Constant has signed a contract for the sale of her current residence. Closing is anticipated to take place in the coming month, and Ms. Constant is presently in the process of finding and relocating to a home in Calistoga.

Since February 25, 1992, Ms. Constant has been an associate real estate agent for James Warren and Son (Realtors), 1414 Main Street, St. Helena, California. St. Helena is located within the 1.0 mV/m contour of Moonbeam's proposed radio station. In the event that Moonbeam's application is granted, Ms. Constant will terminate any other current employment in order to fulfill her integration commitment to work full-time as General Manager of Moonbeam's radio station in Calistoga, California.

Past Residence

From 1946 until 1969, Ms. Constant resided in Sonoma County, which is contiguous to Napa County, the county in which Calistoga is located. From 1963-1964, during her years of residence in Sonoma County, Ms. Constant served as a Junior Grey Lady at the Petaluma Hospital, Petaluma, Sonoma County, California. Ms. Constant also attended college at Sonoma State University, Santa Rosa, Sonoma County, California, from 1964 through 1966. Santa Rosa and substantial portions of Sonoma County are within the 1.0 mV/m contour of Moonbeam's proposed station.

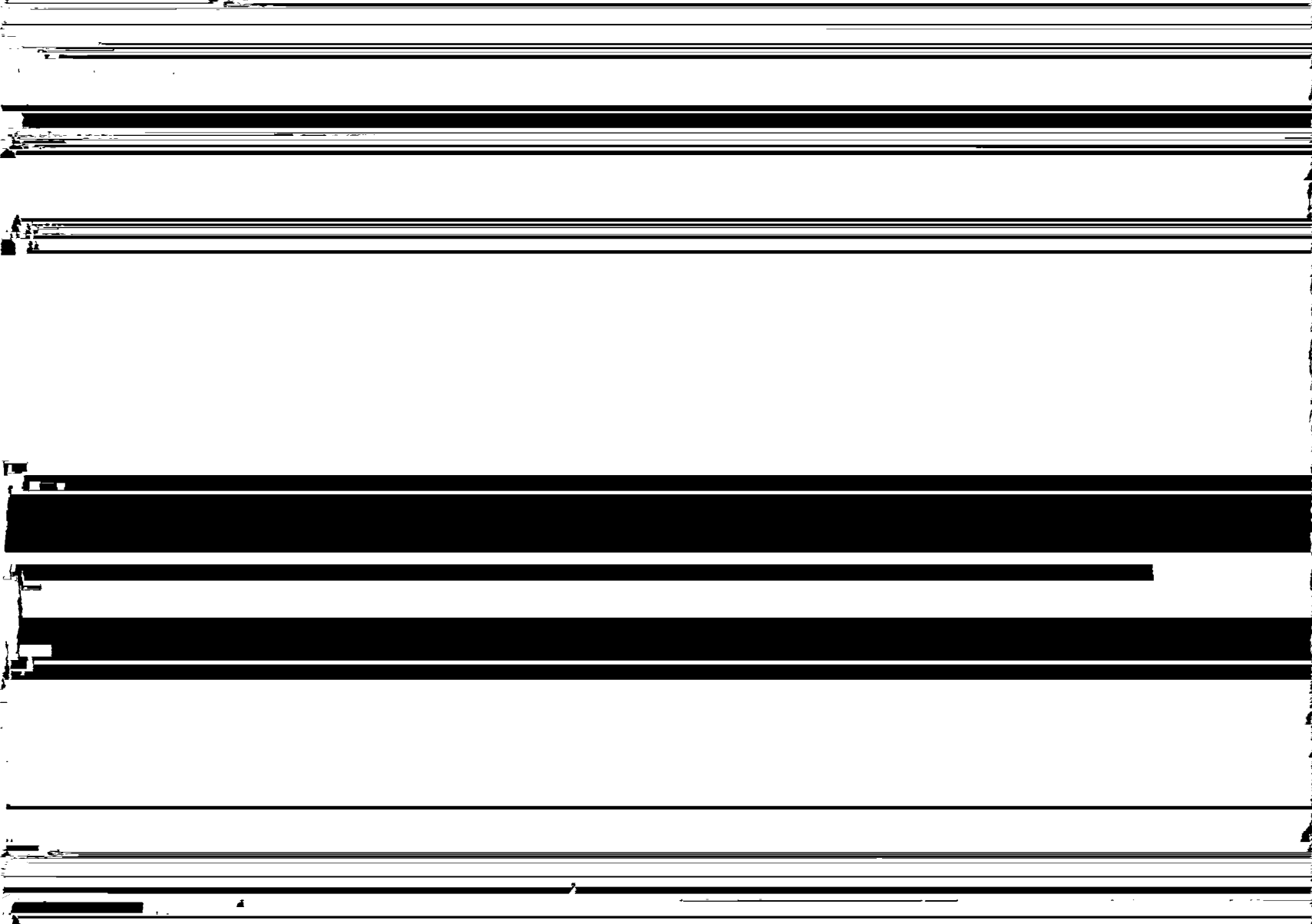
Civic Involvement

Ms. Constant also claims an enhancement for civic involvement in the Calistoga area. Since February, 1992 Ms. Constant has been a member of the Calistoga Chamber of Commerce, the Sharpsteen Museum, and the Calistoga Performing Arts Association, all civic organizations located in Calistoga, California. Further, she is and has been since June, 1992 a member of the Daughters of the California Pioneers. Ms. Constant has served since May, 1992 as a volunteer for the Napa Valley

Wine Auction, St. Helena, California, a benefit for Napa Valley hospitals, and since 1988 has served as a docent at the Terwillager Nature Education Center, which provides services to elementary schools in Napa and Sonoma counties and which is located in Corte Madera, California. In November, 1992, Ms. Constant became a Provisional Member of the Napa/Sonoma Junior Service League.

Auxiliary Studio and Transmitter Power

Moonbeam has also proposed to install auxiliary power generating equipment at both its proposed studio and transmitter site locations.




Diversification

Moonbeam has no other interests in medium of mass communications. Neither Ms. Constant nor Ms. Van Paepegum has any other interests in medium of mass communications.

Respectfully submitted,

MOONBEAM, INC.

By 
Mary E. Constant
President

March 31, 1993

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing Integration and Diversification Statement was mailed this date by First Class U.S. Mail, postage prepaid, by overnight courier†, or was hand-delivered*, to the following:

✓ A. Wray Fitch, III, Esquire†
Gammon & Grange
8280 Greensboro Drive
McLean, VA 22102-3807

Administrative Law Judge Edward Luton
2000 L Street N.W.
Washington, D.C. 20036

Larry Miller, Esquire*
Federal Communications Commission
Mass Media Bureau, Hearing Branch
Suite 7212
2025 M Street N.W.
Washington, D.C. 20 20554

Nancy E. Davies

EXHIBIT 3

DECLARATION

I, Mel Freedman, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I am a Consulting Radio Engineer and prepared the engineering portion of Gary Willson's pending application for a new FM station at Calistoga, California.
2. California State University Sonoma is situated in Rohnert Park, a separate (incorporated) community located approximately 11 kilometers south of Santa Rosa, California.
3. I have reviewed Moonbeam, Inc.'s engineering proposal for a new FM station at Calistoga, California, both as originally filed on 15 November 1991 and as amended on 2 March 1992. California State University Sonoma is approximately 6-7 kilometers outside the 1.0 mV/m service contour as calculated either in the original application or as amended.

Hughson, California
20 April 1993

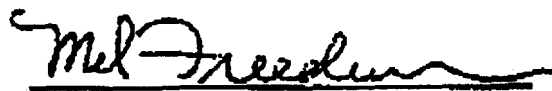

Mel Freedman

EXHIBIT 4

REAL ESTATE INVESTMENT PLANNERS

EXHIBIT 5

Carol Bedi
3004 Tapaz Dr.
Novato, California 94945
892-3117

April 9, 1993

To Whom It May Concern,

I, Carol Bedi, called James Warren and Sons Realtors (1414 Main Street, St. Helena, Calif.) on Friday, March 12, 1993 at 9:30 A.M. I spoke with Gina Elliot.

I asked for Mary Constant and was told that she was not there. I said I understood Mary Constant was a realtor at their office. Ms. Elliot said Mary Constant was not a realtor there but that she was looking for property. Unless something happened recently she was not employed there. She offered to give me Ms. Constant's

home phone number so I could contact
her. The number I was given
is 415-662-2226.

the foregoing statement is made
under penalty of perjury.

Carol Bedi
April 9, 1993

EXHIBIT 6